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No. 76-1696

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

David C. Hakim, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

REPLY TO THE MEMORANDUM FOR THE RESPON-
DENT IN OPPOSITION

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INTRODUCTION

This is a proceeding to convene a Three Judge District Court under 28 U. S.C. sections 46 (the investment tax credit), 611 and 613 (percentage depletion of natural resources), 995 (the Domestic International Sales Corporations (DISC) "deferral" of income), 1014¹ (the stepped up basis of property acquired from a decedent) and 1201 and

¹It should be noted that because of the basis boost by I.R.C. Section 1023 of most property held by a decedent to its value on December 31, 1976, many years must pass and a minimum estimated 75 billion dollars in taxes lost until the

(1)

edent), and 1201 and 1202 (The capital gains exclusion) on the grounds that such legislation are arbitrary exercises of the taxing power shifting the burden of paying taxes upon lower and middle income taxpayers.² All relevant dates and prior disposition of this cause are contained within the appendix to the petition and the petition itself.

STANDING TO SUE

A) The Petitioner as a Proper Party.

In rebuttal this petitioner recapitulates his prior statement on standing as contained within his petition and replies to the respondent's arguments as follows:

- (a) The injured parties in Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, would not have been assured that hospitals would have admitted them even if the Court had declared that I.R.C. Section 501 (c) (3) exempt status would no longer be permitted. The conduct of the hospitals per se was not before the Court since the hospitals were not parties to the action.
- (b) Schlesinger v. Reservists to Stop the War, 416 U.S. 208 and U.S. v. Richard-

latter section will effectively eliminate a substantial part of the inequity brought about by pre-1977 Section 1014, but with the necessity of understanding and using an extremely complex (though one of many) Code section.

²This petitioner believes he has adequately addressed himself to an analysis of any economic bene-

son, 418 U.S. 166, were actions wherein reservist membership of members of Congress was questioned under Article 1, Section 6, Clause 2 of the U.S. Constitution and C.I.A. under Article 1, Section 9, Clause 7 respectively, with no direct injury to the complainants proven. (c) Massachusetts v. Mellon, 262 U.S. 447, questioned expenditures for maternity and child care.

B) The Allegation of a Substantial Federal Question.

(a) Brushaber v. Union Pac R.R., 240 U.S. 1,³ and Steward Machine Co. v. Davis, 301 U.S. 548, support the argument of this petitioner that the Court has authority to strike down tax legislation found to be arbitrary:

(W)e assume that discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and Annulment. Steward Machine Co. v. Davis, 301 U.S. 548, 585, 57 S. Ct. 883, 890.

fit of the alleged unconstitutional tax preferences in his petition. More concerning their economic disruption will be stated within this reply.

³This petitioner quotes the relevant quotation from Brushaber on pages 15-16 of his petition.

(b) This petitioner personally knows of businesses that cannot benefit from the investment tax credit because they cannot afford the needed investment or don't have the credit as do larger businesses. They would benefit more from the government funding the Small Business Administration with the abolition of the credit which only serves to make the competitive advantage of the larger businesses even greater.

(c) Brewster v. Gage, 280 U.S. 327, did not question the constitutionality of Section 1014 (the stepped up basis of property acquired from a decedent⁴). And neither Commissioner v. Gillette Motor Co., 364 U.S. 130, nor Commissioner v. Brown, 380 U.S. 563, questioned the constitutionality of Sections 1201 and 1202 (the capital gains provisions) of the Code.

⁴The Joint Committee on Taxation of the Congress of the United States on December 29, 1976, stated the following about pre-1977 Section 1014 (which is equally applicable to its literal retention for this generation by Section 1023):

Prior law resulted in an unwarranted discrimination against those persons who sell their property prior to death as compared with those whose property was not sold until after death. Where a person sells appreciated property before death, the resulting gain is subject to the income tax. However, if the sale of the property

(Footnote 4, continued)

could be postponed until after the owner's death, all of the appreciation occurring before death would not be subject to the income tax.

This discrimination against sales occurring before death created a substantial "lock in" effect. Persons in their later years who might otherwise sell property were effectively prevented from doing so because they realized that the appreciation in that asset be taxed as income if they sold before death, but would not be subject to income tax if they held the asset until their death. The effect of this "lock in" was often to distort the allocation of capital between competing sources.

Joint Committee Explanation, 94th Congress, 2nd Session, published in 1976-3 C.B., Vol. 2, at 564 (p. 552 of the Joint Committee Explanation).

But what the Committee avoided stating was the actual motive, that of someday reducing the discrimination against those who deposit their fully taxed earnings in the bank, paying taxes on interest, and their estate still paying estate taxes when they pass away.

CONCLUSION

That this cause seeks to have enjoined clear acts of tyranny of the Congress of the United States should be apparent from the following:

(a) The Honorable Henry H. Fowler, Secretary of the Treasury, presented the following to Congress on December 11, 1968:

Examples of effective nontax methods of achieving objectives that have been sought through the tax system include guaranteed loans, equal opportunity grants, and other programs to assist students and their families with costs of higher education; direct grants for water pollution control projects; rent supplements and interest subsidies to increase the supply of low and middle income housing; and government contracts with private employers to train hard core unemployed for jobs. These methods achieve the important objectives in a manner consistent both with an equitable tax system and with careful

and responsible budgetary control by the executive and the Congress. (Emphasis added). Tax Reform Studies and Proposals, U.S. Treasury Department (Joint publication, Committee on Ways and Means of the U.S. House of Representatives and Committee on Finance of the U.S. Senate, 91st Congress, First Session, published February 1, 1969) at 7-8.

(b) Article 10, Right of Revolution:

Government being instituted for the common benefit, protection, and security of the community and not for the interest or emoluments of any one man, family, or class of men; therefore, whenever the ends of government are perverted and public liberty manifestly endangered and all other means of redress ineffectual, the people may, and of right ought to reform the old or establish a new government. The doctrine of nonresistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

New Hampshire Bill of Rights 1784, as quoted in Great Quotations, compiled by George Seldes (N.Y.: Pocket Book Edition, Nov. 1972), 448.

- (c) At the June 30 meeting of the Board of Directors of the Grosse Pointe Inter-Faith Center for Racial Justice, the Board voted unanimously to strongly endorse the suit you (the petitioner) are bringing before the United States Supreme Court, #76-1696.

Although the Inter-Faith Center will not be entering an amicus brief in the case, we wish to go on record in strong support of your case against the unfair income tax structure in the United States and applaud your efforts in doing so on behalf of all lower and middle income people.... Letter dated August 3, 1977, from the G.P.I.F.C.R.J., 15222 E. Jefferson, Grosse Pointe Park, Michigan, 48230, (313) 824-0350, signed Gail Wingard, Executive Director.

Therefore, this petitioner again requests certiorari for this cause

and

(a) remand to the United States District Court for the Eastern District of Michigan, Southern Division, or preferably

(b) the settlement of this cause by the Court itself.

Respectfully submitted,

David C. Hakim
David C. Hakim,
Petitioner

No. 76-1696

David C. Hakim, Petitioner

Commissioner of Internal Revenue

October Term, 1977

CERTIFICATE OF SERVICE OF THE REPLY
TO THE MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION

It is hereby certified that three copies of the Reply to the Memorandum in Opposition was served by mailing postage prepaid on September 20, 1977 to;

Daniel M. Friedman
Acting Solicitor General
Department of Justice
Washington, D.C. 20530

David C. Hakim
David C. Hakim,
Petitioner
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